

Managed Services Master Service Agreement



APPENDIX D TO DIR CONTRACT NO. DIR-TSO-3462

Document Logistix LLC
3616 Far West Blvd., Suite 117
Austin, TX 78731
T: +1 (512) 345-4600
F: +1 (512) 233-2351

Between:

Document Logistix LLC

3616 Far West Blvd, Suite 117-309, Austin, TX 78731

("Document Logistix"):

and

The Customer (the "**Customer**").

1. Definitions

In this document it is agreed that:-

- 1.1. **Authorized Representative** – means Document Logistix' authorised distributor or reseller;
- 1.2. **Business Days** – means 08:00 to 18:00 (US CST time) and 09:00 to 17:30 (UK time) on a day not being a Saturday, Sunday or statutory holiday on which clearing banks are open for business in the United States.
- 1.3. **Business Hours** - means 08:00 to 18:00 US CST time and 09:00 to 17.30 UK time on Business Days;
- 1.4. **Charges** – means our charges in respect of Products and/or Services as detailed in the Order.
- 1.5. **Confidential Information** – To the extent allowable under the Texas Public Information Act, means all information designated as such by either party in writing and all such other information which relates to the business affairs, finance, products, data, software programs, specifications, documentation, software listings, source or object code, developments, trade secrets, know how, personnel, customers and suppliers of either party, together with all information which may reasonably be regarded as the confidential information of the disclosing party.
- 1.6. **Contract** – means in order of precedence: DIR Contract No. DIR-TSO-3462, this Agreement, the Service Level Agreement, the Statement of Works (if any), the Order, and the Service Description.
- 1.7. **Customer** – means the end user organization or individual user of the Software.
- 1.8. **DLX** – means Document Logistix Limited.

Emergency Maintenance – means maintenance of the Service that is carried out without prior notification in order to avoid a critical event that would otherwise occur if immediate action were not taken.

- 1.9. **Equipment** – means the hardware and systems owned or managed by DLX upon which the Software is installed;
- 1.10. **Force Majeure** – In accordance to Appendix A, Section 11C of DIR Contract No. DIR-TSO-3462.

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- 1.11. **Maintenance and Support** - means the maintenance and support services described in the Service Level Agreement ("SLA");
- 1.12. **Order Form** – means the order form, site audit, proposal or scoping document;
- 1.13. **Product** – means any Third Party hardware;
- 1.14. **Service** – means the configuration, operation and management services to be delivered by Document Logistix or Document Logistix' Authorized Representative;
- 1.15. **Service Level Agreement** – means the document that describes our obligations and responsibilities relating to the delivery of Products and/or performance of the Service.
- 1.16. **Software** – means the software Document Logistix provided for use under this Agreement as part of the Service provided, including any ancillary documentation;
- 1.17. **Supervising Officer** – means the Customer's primary contact for the operational use of the Software.
- 1.18. **Third Party Software** – means software which is supplied to the Customer as part of the Services and is licensed from a third party.

2. Scope of this Agreement

- 2.1. Document Logistix grants to the Customer a non-exclusive, non-transferable, licence to use the Service for the number of concurrent users specified on the Order Form and Purchase Order.
- 2.2. If the Customer proceeds to use the Service, the Customer agrees that it has accepted the terms of DIR Contract No. DIR-TSO-3462 and this Agreement.
- 2.3. The agreement shall last the period agreed per the Order but no less than a minimum of initial 12 months from first use.
- 2.4. The agreement shall have three (3) one (1) year renewal options to be exercised by Customer providing thirty days written notice to Vendor prior to the then-expiration date unless terminated in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3462.
- 2.5. Except as expressly agreed, the Customer will not rent, lease, or sub-license the Service.
- 2.6. Document Logistix shall have no liability for the repair of defects relating to any 3rd party Products and/or Third Party Software, and the Customer's right in respect of any such defect shall be limited to the relevant manufacturers' warranties.

3. Quotation and Acceptance

- 3.1. A quotation by DLX does not constitute an offer.
- 3.2. Your signature on a written Order or submission of an electronic Order represents an offer to Purchase the Products/Services under the terms of DIR Contract No. DIR-TSO-3462 and this Agreement and you will be bound by such Order.
- 3.3. Our acceptance will be effective only upon our acceptance in writing of the Order, or our electronic acceptance of an electronic Order. Our acceptance of the Order will result in a contract.

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4. Technical Services / Training

- 4.1. Any training or technical services purchased must be taken / used within 12 months of the date ordered.

5. Changes to Service Provided

- 5.1. For operational and/or regulatory reasons we may vary the technical specifications of Products And/or Services from time to time provided that the Products and/or Services are not adversely affected.
- 5.2. From time to time, we may find it necessary to discontinue a Product for a number of reasons including product enhancement, upgrade and end of life ("EOL"). When a product reaches EOL, we will communicate to you important milestones throughout the EOL period, including the initial EOL notification, the last order date for the Product and end of support milestone dates, as well as other key information pertaining to the affected Product and/or related Service. Accordingly, we reserve the right to cancel that part of the Contract that relates to the affected Product, by giving to you not less than three months' written notice, such notice to be given at any time during the Minimum Period or thereafter.

6. Charges and Payment Terms

- 6.1. The Charges for Products/Services will be stated in the Order and as indicated in Appendix C of DIR Contract No. DIR-TSO-3462.
- 6.2. We will commence charging you for the Products and/or Services from the date that the Products and/or Services are accepted.
- 6.3. If you fail to supply us with the information and/or the assistance required and fail without good reason to remedy such failure within seven days of receipt of a written notice confirming the information required, we reserve the right to commence charging from the date that the Products and/or Services would have been made available but for such failure.
- 6.4. Payment of all Charges due under any Order will be handled in accordance with Appendix A, Section 8J of DIR Contract No. DIR-TSO-3462.
- 6.5. Taxes will be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3462.

7. Customer Responsibilities

- 7.1. Where necessary the Customer will allow reasonable physical and systems access to its Location and Equipment to enable Document Logistix to install any required Software and to provide Maintenance and Support. Document Logistix engineers will need network logins for the Software being used on the Equipment with administration rights.
- 7.2. The Customer agrees to use the Software in accordance with all operating instructions and agreed procedures and not to change its configuration without the approval of Document Logistix.

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- 7.3. The Customer will not attempt to Reverse Engineer, alter or modify the Software, transfer the Software, combine or incorporate it in other programs, or decompile or disassemble the object code version of the Software.

8. DLX Responsibilities

- 8.1. We will deliver the Products and/or Services at all times with reasonable skill and care and in accordance with generally accepted industry practice.
- 8.2. Time for the delivery or provision of Products and/or Services under the Contract is not of the essence and will not be made so by the service of any notice.
- 8.3. We will give you at least five days' notice of any Scheduled Maintenance and will endeavour to carry out such maintenance outside of the Business Day. We will use reasonable endeavours to give you advance notice of any Emergency Maintenance, although you accept that due to the nature of the Service this may not always be possible. In either case, we will endeavour to minimise any Downtime.
- 8.4. Document Logistix will use best endeavours to identify and rectify any software or system faults identified by the Customer.
- 8.5. If Document Logistix cannot reproduce a logged fault, the Customer will assist in providing remote access to the PC and or Server to further investigate the fault.

9. Warranties

- 9.1. Document Logistix will provide the Service in a workmanlike and professional manner. The Software is licensed "AS IS". Save as otherwise provided for in this Agreement, Document Logistix grants no warranties to the Customer regarding the Software, the Third Party Software or the Products, including but not limited to implied warranties as to their fitness for any purpose, that the Software, Third Party Software and Products will be error-free or the operation of the Software, Third Party Software and Products will be uninterrupted.

10. Confidentiality

- 10.1. To the extent allowable under the Texas Public Information Act, both parties shall use all reasonable endeavours to ensure that all information received from the other party is not disclosed to any third party and is not used for any purpose other than in the proper performance of obligations hereunder.
- 10.2. Information belonging to the other party may be disclosed or used (as appropriate) by a party without the consent of that other (the disclosing party) if: it is now or subsequently becomes publicly known to that party through no wrongful act by that party; or if it is at the time of disclosure already known by the party to whom disclosure is made; or it is required to be disclosed by either party by an order of law or other binding regulation; or it is to be disclosed to the professional advisors of that party where the principle of client confidentiality would prevent the further release of that disclosed information by the advisor concerned; or it is to be disclosed to the contractors of that party where a nondisclosure agreement would prevent the further release of that disclosed information by the contractor concerned.

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10.3. The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding expiry or termination of this Agreement.

11. Intellectual Property

11.1. Intellectual Property will be handled in accordance to Appendix A, Section 5 of DIR Contract No. DIR-TSO-3462.

12. Termination

12.1 Termination will be handled in accordance with Appendix A, Section 11B of DIR Contract No. DIR-TSO-3462.

- 12.1. Upon termination of the Agreement, all outstanding undisputed fees are immediately due and payable, and all rights to use the Service will be immediately revoked.
- 12.2. Termination will be without prejudice to any rights of either party arising on or before termination, which includes without limitation, your obligation to make any payment due to us for Products and Services supplied (including for the avoidance of doubt any Charges incurred in respect of work in progress) prior to the date of termination.
- 12.3. Upon termination, we will upon request and in our reasonable discretion provide reasonable assistance to facilitate the migration of the Products/Services to you or a replacement supplier. Such assistance is subject always to (a) payment by you of our then prevailing technical services and/or other applicable Charges, (b) full co-operation from you and/or the new supplier, and (c) provision by you of a fully scoped, mutually agreed migration plan.

13. Indemnification

13.1. Indemnification will be handled in accordance with Appendix A, Section 10A of DIR Contract No. DIR-TSO-3462.

14. Force Majeure

14.1. Force Majeure will be handled in accordance with Appendix A, Section 11C of DIR Contract No. DIR-TSO-3462.

15. Liability

15.1. Limitation of Liability will be handled in accordance with Appendix A, Section 10K of DIR Contract No. DIR-TSO-3462

16. U.S. Government

16.1. The Software is provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the U.S. Government is subject to the restrictions as set forth in sub-paragraph (c)(1) (ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or sub-paragraphs c(1)

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and (2) of the Commercial Computer Software Restricted Rights at 48 C.F.R. 52.227- 19 as applicable.

17. General

- 17.1. Document Logistix may audit or instruct a third party to audit and inspect the Customer's records and systems once annually to ensure compliance with this Agreement, the Customer providing reasonable access, subject to the Customer's confidentiality and security requirements.
- 17.2. Each party acknowledges that it has entered into this Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in DIR Contract DIR-TSO-3462 and this Agreement and, save as expressly set out in this Agreement, each party shall have no liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.
- 17.3. Assignments will be handled in accordance with Appendix A, Section 8E of DIR Contract No. DIR-TSO-3462
- 17.4. Only parties to this Agreement may enforce its terms.
- 17.5. The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and the parties hereby agree to exclusive venue in the state district courts of Travis County, Texas.

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18. Agreement

By signing this Agreement you confirm that you are entering this Agreement in the course of your business and not as a consumer.

On behalf of the customer _____

Name (print): _____

Authorised signature: _____

Title: _____

Date: _____

On behalf of Document Logistix LLC

Name (print): _____

Authorised signature: _____

Title: _____

Date: _____

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